

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
) Criminal Action No.
v.) 08-00162-01-CR-W-NKL
)
MATTHEW HARKER,)
)
Defendant.)
)

ORDER

On April 15, 2008, United States Magistrate Judge Sarah W. Hays issued a Report and Recommendation recommending that this Court enter an order denying Defendant Matthew Harker's Motion for Disqualification Pursuant to 28 U.S.C. § 455 [Doc. # 31]. [Doc. # 47.]

The record in this case includes a May 1, 2008 Criminal Complaint charging Defendant with threatening to murder Judge Dean Whipple and Judge Ortrie Smith, judges on the United States District Court for the Western District of Missouri. The affidavit in support of the Complaint indicates that a person identifying himself as Matthew Harker left a message on the voicemail for Judge Whipple's chambers stating, among other things: "If I see Mr. Whipple or Mr. Smith, I will kill Mr. Whipple or Mr. Smith. They will correct themselves, they will carry through on the case or they will not live." The affidavit outlines steps taken to identify the caller and the allegedly resulting arrest of Defendant. On June 24, 2008, a one-count Indictment was filed against Defendant alleging a threat against a United States judge in violation of 18 U.S.C. § 115(a)(1)(b) and (b)(4). Subsequently, Defendant

was found to be incompetent and committed to the custody of the Attorney General for hospitalization and treatment pursuant to 18 U.S.C. § 4241(d).

Defense counsel has filed a motion to disqualify all of the judges of the United States District Court for the Western District of Missouri from all further proceedings in this case. Magistrate Judge Sarah W. Hays's Report and Recommendation contains a thorough discussion of the relevant law and its application to the facts of this case.

Pursuant to the Report and Recommendation of United States Magistrate Judge Sarah W. Hays, to which there has been no timely objection, and after a *de novo* review of the record, the Court finds that the average person would not harbor a doubt about the impartiality of the two judges assigned to hear Defendant's case. The portion of the disqualification motion seeking recusal of all judges in the district is moot.

Accordingly, it is hereby ORDERED that Defendant's Motion for Disqualification Pursuant to 28 U.S.C. § 455 [Doc. # 31] is DENIED.

IT IS SO ORDERED.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: May 11, 2009
Jefferson City, Missouri